

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

BKY 04-31087 GFK

*Steven M. Johns and
Karen S. Johns,*

Chapter 13 Case

Debtors.

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF
CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:30 a.m. June 24, 2004 in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota. **PLEASE NOTE THAT CONTESTED MATTERS ONLY ARE CONTINUED FOR HEARING FROM MAY 27, 2004 AT 10:30 A.M. TO JUNE 24, 2004 AT 10:30 A.M. IN COURTROOM 228B, UNITED STATES COURTHOUSE, 316 NORTH ROBERT STREET, ST. PAUL, MINNESOTA.**

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on June 23, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than June 21, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The case was filed on February 25, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the Debtors' proposed Chapter 13 plan dated March 11, 2004 (the "Plan").

6. The Debtors propose to pay \$330 per month for 36 months to the Trustee, for a total of \$11,880 ("Plan Funds"). Proposed distribution of Plan Funds is as follows:

Secured Claim of Bank One	7,300.00 ¹
Trustee fees	672.45(6.0%)
Unsecured creditors	3,907.55

7. Based upon estimated claims of \$64,395, the proposed return to general unsecured creditors is no more than 6%.

8. Based upon Schedule A, the Debtors have an interest in real property described as Lot 2, Block 1, Forest Lake Preserve Estates, Washington County, Minnesota, which they claim as their exempt homestead under 11 U.S.C. § 522(d)(1), and value at \$290,000. The property is encumbered by a first mortgage in favor of Wells Fargo Bank in the amount of \$140,038 and a second mortgage in favor of Bank One in the amount of \$130,448.²

9. Using the Debtors' value, they have approximately \$19,514 of equity in their homestead, which they claim as exempt under 11 U.S.C. § 522(d)(1).

10. Based upon Washington County property tax information, for 2004, the homestead was valued for tax purposes at \$305,000. A copy of the Washington County property information is incorporated herein and attached hereto as Exhibit A.

11. It is the Trustee's position that the Washington County property tax information provides a more accurate assessment of the value of the real estate. As such, the Debtors' equity in the homestead is approximately \$34,514, leaving \$2,186 available to apply to other property for exemption purposes under 11 U.S.C. § 522(d)(5).

12. Assuming the Debtors' listed values, the Debtors have the following personal property that they claimed exempt on Schedule C under 11 U.S.C. § 522(d)(5):

<u>Property</u>	<u>Exemption statute</u>	<u>Value</u>
Timeshare Unit	11 U.S.C. § 522(d)(5)	\$ 1
Associated Healthcare Credit Union		
-Savings	11 U.S.C. § 522(d)(5)	25
Associated Healthcare Credit Union		
-Checking	11 U.S.C. § 522(d)(5)	200
1997 Riding Lawnmower	11 U.S.C. § 522(d)(5)	1,500

¹ The actual mortgage arrearage per Claim No. 2 filed by Bank One is \$12,601.18. The Plan provides that the Debtors will reduce this arrearage by payment of a lump sum of \$6,000 from their tax returns. The remaining arrearage is to be paid through the Plan.

² The Debtors also have an interest in a timeshare unit, which they value at \$2,500, encumbered in excess of its value by mortgages in the amount of \$6,837. The Trustee does not dispute the Debtors' valuation of this asset.

<u>Property</u>	<u>Exemption Statute</u>	<u>Value</u>
Household Tools	11 U.S.C. § 522(d)(5)	\$ 2,000
Roto-tiller and plow	11 U.S.C. § 522(d)(5)	500
2001 Chevrolet Impala	11 U.S.C. § 522(d)(5)	1,625
2001 Chevrolet Impala	11 U.S.C. § 522(d)(5)	4,825
1993 Honda Civic	11 U.S.C. § 522(d)(5)	3,000
1971 Pontiac GTO	11 U.S.C. § 522(d)(5)	5,000
	<u>Total</u>	\$18,676

12. Based upon these figures, the Debtors' exemption claim exceeds the allowable amount by \$16,490. A hearing on the Trustee's objection to the Debtors' claims of exemption is scheduled for hearing on June 14, 2004.

13. Comparing the amount the Plan proposes to pay to unsecured creditors (\$3,907.55) with the value of non-exempt property (\$16,490), the Plan does not meet the "best interest of creditors" test. *11 U.S.C. § 1325(a)(4)*.

14. If necessary, the Debtors and/or representatives of the Chapter 13 Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests that confirmation of the Debtors' proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Jasmine Z. Keller, Trustee

Dated: May 19, 2004

/e/ Margaret H. Culp

Thomas E. Johnson, ID # 52000
Margaret H. Culp, ID # 180609
Counsel for Chapter 13 Trustee
12 South 6th Street, Suite 310
Minneapolis, MN 55402-1521
(612) 338-7591

VERIFICATION

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed: May 19, 2004

/e/ Margaret H. Culp



Department of
Assessment, Taxpayer
Services and Elections

14949 62nd Street North PO Box 6
Stillwater, MN 55082-0006
(651) 430-6175
www.co.washington.mn.us

Notice of Valuation and Classification for Taxes Payable in 2005 - This is NOT a bill -

This form is to notify you of the market value and classification of your property for assessment year 2004. The property taxes you will pay in **2005 (next year)** will be based on this valuation and classification.

Property ID: **33.032.21.32.0006**

Property Address: **6490 184TH ST N**
Municipality: **FOREST LAKE**

Taxpayer: 65357
STEVEN M & KAREN S JOHNS
6490 184TH ST N
FOREST LAKE MN 55025

Tax Description:
FOREST LAKE PRESERVE ESTATES
LOT-002 BLOCK-001
FOREST LAKE TOWNSHIP

Property Classification. The statutory classification that has been assigned to your property based upon your use of the property. A change in classification of your property can have a significant impact on the real estate tax payable. Please compare the 2003 and 2004 classifications. (Note: each parcel of commercial and industrial property has a reduced, "preferred" class rate on the first tier of market value (\$150,000) and a "non-preferred" rate on the remaining market value, except in the case of contiguous parcels owned by the same person or entity. Contiguous properties are classed at the "non-preferred" rate. Please call your assessor for details and exceptions.)

Estimated Market Value. This value is what the assessor estimates your property would likely sell for on the open market. State law requires assessors to value property at 100% of market value.

Value of New Improvements. This is the assessor's estimate of the value of new or omitted improvements you have made to your property. These improvements are not eligible for limited market value.

Limited Market Value. Limits how much the taxable value of certain properties can increase. With the exception of new improvements, the value is limited to the greater of 1). 15% increase over last year's limited value or 2) 25% of the difference between this year's estimated value and last year's limited value. This only applies to agricultural, residential, timberland, or non-commercial seasonal recreational residential (cabins) property.

Green Acres Value. Only applies to agricultural property that is facing increasing values due to development pressures not related to the agriculture value of the land. The assessor arrives at this lower value by looking at what comparable agricultural land is selling for in areas where there is not development pressure. The taxes on the higher value are deferred until the property is sold or no longer qualifies for the program.

Plat Deferral. For land that has been recently platted (divided into individual lots) but not yet improved with a structure, the increased market value due to platting is added over a phase-in period. If construction begins before the expiration of the phase-in period,

2003	2004
For the taxes you will pay in 2004	For the taxes you will pay in 2005

RES HSTD	RES HSTD
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\$281,700	\$305,000
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\$269,000	
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EXHIBIT A

the lot will be assessed at full market value in the next assesement

This Old House Exclusion. Applies only to homestead property 45 years of age or older and valued at less than 400,000. Improvements that increase the estimated market value by 5,000 or more during the 2003 assessment will qualify for this exclusion. Value that has been deferred for 10 years will begin to be phased in with the 2004 assessment.

Taxable Market Value. This is the value that your property taxes are actually based on, after all reductions, limitations, exemptions, and deferrals. Your 2004 value, along with the class rate and the budgets of your local government, will determine how much you will pay in taxes.	\$269,000	\$305,000
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If you believe your valuation and property class are correct, it is not necessary to contact the county or attend the meetings listed below. If the property information is not correct, if you disagree with the values, or if you have other questions about this notice, **please first contact your assessor's office at 651-464-4862 to discuss any questions or concerns.** Often your issues can be resolved at this level.

If your questions or concerns are not resolved, more formal appeal options are available. Please read the back of this notice for important information about the formal appeal process.

Local Board of Appeal and Equalization Meeting
MONDAY MAY 3, 2004 6:00 PM - 8:00 PM CITY HALL

To appear call your local assessor at 651-464-4862.

County Board of Appeal and Equalization Meeting
TUESDAY JUNE 15, 2004 GOVERNMENT CENTER STILLWATER, MN

To appear call (651)430-6110 by May 21, 2004.

You must first appeal to the Local Board of Appeal and Equalization before you can appeal to the County Board of Appeal and Equalization.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

*Steven M. Johns and
Karen S. Johns,*

Debtors.

BKY 04-31087 GFK

Chapter 13 Case

MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the debtors in their verified Schedules and Statements on file and of record herein.

LEGAL DISCUSSION

Bankruptcy Code section 1325(a)(4) requires that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date".... 11 U.S.C. § 1324(a)(4). In this case, based upon items listed in Schedule B filed by the Debtors, and the values listed for each non-exempt asset, the Debtors' Plan fails to meet the "best interest of creditors test" because the amount to be paid to unsecured creditors is not more than they would receive if a Chapter 7 Trustee liquidated his non-exempt assets.

CONCLUSION

For the reason stated herein, confirmation of the Debtors' proposed Chapter 13 plan should be denied.

Dated: May 19, 2004

Respectfully submitted:

/e/ Margaret H. Culp

Thomas E. Johnson, ID # 52000

Margaret H. Culp, ID # 180609

Counsel for Chapter 13 Trustee

12 S. 6th Street, Suite 310

Minneapolis, MN 55402-1521

(612) 338-7591

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on May 19, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Plan, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

By electronic means:

United States Trustee
612-664-5516
Craig W. Andresen, Esq.
952-854-4114

By first class U.S. mail:

Craig W. Andresen, Esq.
2001 Killebrew Drive, Suite 330
Bloomington, MN 55425

Steven M. Johns
Karen S. Johns
6490-184th Street North
Forest Lake, MN 55025

Teresa R. Stephens, Esq.
McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076-2102

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: May 19, 2004

/e/ Margaret H. Culp

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ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

At St. Paul, MN, _____, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the Debtors' proposed Chapter 13 plan.

Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

Confirmation of the Debtors' proposed Chapter 13 plan dated 3/11/04 is
DENIED.

Gregory F. Kishel
Chief United States Bankruptcy Judge